

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.139 OF 1990

Messrs Daulatram Tikamdas,
a firm registered under the
provisions of the Partnership Act,
1932 carrying on business at 407,
Navjivan Building, 4th Floor,
121/127, Kasi Sayed Street,
Bombay - 400 003.

.. Petitioner

v/s.

1. The State of Maharashtra
2. The Director of Agricultural
Marketing, Maharashtra State,
Pune-1.
3. The Bombay Agricultural produce
Market Committee, Bombay having
its office at Shri Chhatrapati
Shivaji Maharaj Mandai, 3rd Floor,
Palton Road, Bombay-400 001. .. Respondents

Mr.Milind Vasudeo with Mr.A.S.Panikkar i/by
M/s.Khaitan & Jaykar for the petitioner.

Mr.Y.R.Naik for the respondent Nos.2 and 3.

Mr.M.D.Naik, Assistant Government Pleader for the
respondent No.1.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 17th June, 2005

ORAL JUDGMENT (Per R.M. Lodha, J.)

By means of this writ petition filed under
Article 226 of the Constitution of India, the
petitioner has prayed for the following reliefs:-

"(a) that this Hon'ble Court be pleased to
declare that the Maharashtra

Agricultural (Regulation) application the (Ex. 1988 notice issued and unconstitutional jurisdiction and/or jurisdiction exercise of jurisdiction;

Act, to Notifications 'A' (Ex. dated thereunder of and/or in the irregular

Produce 1963 in its Dates and 18th the 'C' void excess

Marketing purported and 1988 October, public hereto) illegal whatsoever, without of

(b) that issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records of the Petitioners' case and after looking into the legality thereof to quash and/or set aside the impugned notifications hereto) and 20.6.1988 (Ex. 'A' hereto) and 18.10.1988 (Ex. 'B' hereto) and the public notice dated 3.2.89 (Ex. 'C' hereto) in respect of dry fruits/dry dates and the impugned action on the part of the Respondents in seeking to force the Petitioners to apply for the licence under the said Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 in respect of Dry Fruits/Dry Dates and to levy and recover cess from the Petitioners in respect thereof;

(c) that issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India compelling the Respondents their servants and agents to forthwith withdraw and/or cancel the impugned notifications dated 20.6.1988 (Ex. 'A' hereto) and 18.10.1988 (Ex. 'B' hereto) and/or the public notice dated 3.2.89 (Ex. 'C' hereto) and/or from in any manner applying the provisions of the said The Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 in respect of dry fruits/dry dates and/or from in any manner forcing the Petitioners to apply for any licence

thereunder claiming recovering Petitioners in respect of the said dry fruits and dry dates." and/or demanding any cess from in any levying from manner or the

In other words, the petitioner is challenging the constitutional validity of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 to the extent it has been made applicable to the dry fruits and dry dates. The petitioner also challenges the notifications dated 20th June, 1988 and 18th October, 1988.

2. The Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short, 'Act of 1963') was enacted by the Maharashtra State Legislature to regulate the marketing of agricultural and certain other produce in the market areas and the markets to be established therefor in the State; to confer the powers on the Marketing Committee to be constituted in connection with or acting for the purposes connected with such market; to establish market fund for the purposes of the Marketing Committees and to provide for the purposes connected with the matters aforesaid.

3. Section 2 defines various expressions and clause (a) of sub-section (1) thereof defines 'agricultural produce' to mean all produce (whether processed or

not) for agricultural, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the schedule.

4. Clauses (h), (i), (j) of section 2(1) define 'market', 'market area' and 'market committee' thus-

(h) "market" means any principal market established for the purposes of this Act and also a subsidiary market;

(i) "market area" means an area specified in a declaration made under section 4 [and includes the area deemed to be a market area under clause (a) of sub-section (1A) of section 13];

(j) "Market Committee" or "Committee" means a committee constituted for a market area under section 11 [and includes [the Bombay Agricultural Produce Market Committee established under clause (a) of sub-section (1A) of section 13 and]; a committee or committees constituted as a result of amalgamation of Market Committees or division of a Market Committee under section 44];"

5. In clause (t) of section 2(1), 'trader' means a person who buys or sells agricultural produce, as principal or as duly authorised agent of one or more persons.

6. Section 3 of the Act of 1963 provides for publication of notification in the Official Gazette declaring the intention of regulating the marketing of agricultural produce in the specified area.

7. The declaration of regulation of marketing of specified agricultural produce in the market area is made under section 4 of the Act of 1963. It reads thus-

"4. (1) On the expiry of the period specified in the notification issued under section 3, the State Government shall consider the objections and suggestions, if any, received before the expiry of such period and may, if it considers necessary, hold an inquiry in the manner prescribed.

Thereafter, the State Government may, by another notification in the Official Gazette, declare that the marketing of the Agricultural produce specified in the notification shall be regulated under this Act, in the area specified in the notification. The area so specified shall be the market area. A notification under this section may also be published in [a newspaper in the Marathi language] circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area the declaration aforesaid.

(2) On any declaration being made under sub-section (1) no local authority [or any other person] shall thereafter, notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of that agricultural produce.

(3) Subject to the provisions of section 3, the State Government may, at any time by notification in the Official Gazette, exclude from a market area any area, or include therein an additional area, or may direct that the regulation of the marketing of any agricultural produce in any market area shall cease, or that the marketing of any agricultural produce (hitherto not regulated) shall be regulated in the market area."

8. It appears that on 20th June, 1988, the notification was issued under section 4(1) of the Act of 1963 declaring that the marketing of the agricultural produce mentioned therein shall be regulated in the market area of the Bombay Agricultural Produce Market Committee (for short, "the Market Committee"). It is not in dispute that in the list of agricultural produce listed in the notification dated 20th June, 1988 the dry fruits are included.

9. By another notification dated 18.10.1988, the Director of Agricultural Marketing, Maharashtra State, declared Dana Bunder and Masjid Bunder of Greater Bombay as its principal market.

10. In pursuance thereof, public notice was issued calling upon all traders, commission agents and other market functionaries from the principal market and other areas of the Committee to obtain licences and pay market cess for carrying on their trade and miscellaneous activities. It appears that though the petitioner has been trading in dry fruits covered by notification dated 20th June, 1988 and further notification dated 18th October, 1988, they failed to obtain the licence under the Act of 1963 and did not pay the cess. They

approached this court and have challenged the constitutionality of the Act of 1963 and the legality of the notifications.

11. The controversy raised in the writ petition need not detain us for a long in the light of the judgment of the Supreme Court in the case of Mohammad Hussain Gulam Mohammad and anr. v. The State of Bombay and another, AIR 1962 SC 97.

12. In Mohammad Hussain Gulam Mohammad, the question put in issue before the Supreme Court was regarding the constitutionality of the Bombay Agricultural Produce Market Act, 1939 (for short, 'Act of 1939').

13. The contentions raised by the petitioner before the Supreme Court are noticed in paragraph 1 of the judgment thus:

"The petitioners contend that the various provisions of the Act and the Rules and bye-laws framed thereunder place unreasonable restrictions on their right to carry on trade in agricultural produce and thus infringe their fundamental right guaranteed under Art. 19(1)(g) of the Constitution. In particular, the heavy fees payable to the market committee for taking out licences in order to trade in various markets impose a heavy burden on trade in the regulated commodities resulting in an unreasonable restriction on the right of the petitioners to carry on their trade. Further the declaration of the market area and the establishment

of market yard and sub-market yards has
 resulted in compelling producers of
 agricultural commodities to carry their
 produce for long distances, thus imposing
 an unreasonable restriction on their right
 to carry on trade. The petitioners thus
 assail the main provisions of the Act and
 some of the provisions of the Rules and
 the bye-laws framed by the market
 committee, which we shall specify at their
 proper place later. The petitioners also
 contend that the State of Bombay has never
 required the market committee to establish
 a market as required by S.5AA of the Act
 and no market has in law been established
 by the market committee and therefore the
 market committee has no power to issue
 licences and to exercise other powers
 conferred under the Act on market
 committees. They therefore pray that the
 Act and the Rules and the bye-laws framed
 thereunder may be declared
 unconstitutional, ultra vires and void.
 In the alternative a direction should be
 issued to the respondents, in particular
 the market committee, not to enforce the
 provisions of the Act, the Rules and the
 bye-laws against the petitioners so long
 as a market has not been established as
 required under the law."

14. The Supreme Court noticed the provisions of
 the Act of 1939 and in paragraph 5 of the report
 concerning sections 4, 4A, 5, 5A and 5AA thereof
 held that the said provisions were constitutional.

The Supreme Court observed thus-

"5. These are the main provisions of the
 Act and the scheme which results in the
 declaration of a market area and the
 establishment of a market therein. The
 first contention on behalf of the
 petitioners is that Ss.4, 4A, 5, 5A and
 5AA which provide for the declaration of a
 market area and the establishment of a
 market are unconstitutional as they are
 unreasonable restrictions on the right to
 carry on trade in agricultural produce.
 We are of opinion that there is no force

in this contention. This Court had occasion to consider a similar Act, namely, the Madras Commercial Crops in Markets Act.No.XX of 1933, in M.C.V.S.Arunachala Nadar v. State of Madras, 1959 Supp (1) SCR 92: (AIR 1939 SC 300) and the regulation with respect to marketing of commercial crops provided in that Act was upheld. The main provisions of the Madras Act with respect to the declaration of a market area (called notified area in that Act) and the establishment of markets are practically the same as under the Act. It is therefore idle for the petitioners to contend that the main provisions contained in Ss. 4, 4A, 5, 5A and 5AA of the Act are unconstitutional. Learned counsel for the petitioners, however, urges that there is a difference between the Madras Act and the Act inasmuch as the Madras Act dealt with commercial crops whereas the Act makes it possible to bring every crop under its sweep. It is contended that though it may be constitutional to regulate the sale and purchase of commercial crops, sale regulation of all crops made possible under the Act would mean an unreasonable restriction on the fundamental right enshrined in Art. 19(1)(g). We are of opinion that there is no force in this contention. The Madras Act which dealt with commercial crops specified certain crops as commercial crops in the definition section and added that the words "commercial crop" used in that Act would include any other crop or product, notified by the State Government in the Fort St. George Gazette as a commercial crop for the purposes of that Act. In view of this inclusive definition of "commercial crop" in the Madras Act, it was open to the State Government under that Act to include any crop within the meaning of the words "commercial crop" which was regulated by that Act. The Act had a schedule when it was originally passed in which certain crops were included. The State Government was however given the power to add to or amend or cancel any of the items mentioned in the Schedule by S.29. It is true therefore that under the Act it is open to the State Government to bring any crop other than those specified originally in

the provisions; possible regulatory amendment necessarily restriction fundamental 19(1)(g). the crop" enough Government as that difference and why commercial under Act. the sale the its who private produce retail exception do confined trade This with the wholesale dealt There main Act reasons considered 1959 we and intra restrictions trade regulated

Schedule but to bring provisions of make the right As we have already pointed out, definition in the Madras Act was also wide to bring any crop which the State considered fit to be included as a commercial crop for the purposes of that Act. There is thus in our opinion no difference in the ambit of the Madras Act and of the Act. Besides we see no reason why a crop which can be dealt with on a commercial scale should not be brought under the regulatory provisions of the Act. Section 4(2A) makes it clear that the Act does not apply to the purchase or sale of specified agricultural produce, if the producer of such produce is himself its seller and the purchaser is a person who purchases such produce for his own private use or if such agricultural produce is sold to such person by way of retail sale. Thus it is clear from this exception that the provisions of the Act do not apply to retail sale and are confined to what may be called wholesale trade in the crops regulated thereunder. This would suggest that the Act also deals with commercial crops in the same way as the Madras Act, for the notion of wholesale trade implies that the crop dealt with therein is a commercial crop. There is thus no distinction so far as the main provisions are concerned between the Act and the Madras Act, and for the reasons that have been elaborately considered in Arunachala Nadar's case, 1959 Supp (1) SCR 92: (AIR 1959 SC 300) we are of opinion that Ss. 4, 4A, 5, 5A and 5AA of the Act are constitutional and intra vires and do not impose unreasonable restrictions on the right to carry on trade in the agricultural produce regulated under the Act."

15. Dealing with section 29 of the Act of 1939,

the Supreme Court held thus-

"6. The next attack is on S. 29 of the Act, which provides that the State Government may by notification in the official gazette, add to, amend or cancel any of the items of agricultural produce specified in the Schedule. It is submitted that this gives a completely unregulated power to the State Government to include any crop within the Schedule without any guidance or control whatsoever. We are of opinion that this contention must also fail. It is true that S. 29 itself does not provide for any criterion for determining which crop shall be put into the Schedule or which shall be taken out therefrom but the guidance is in our opinion writ larger in the various provisions of the Act itself. As we have already pointed out, the scheme of the Act is to leave out of account retail sale altogether, it deals with what may be called wholesale trade and this in our opinion provides ample guidance to the State Government when it comes to decide whether a particular agricultural produce should be added to, or taken out of, the Schedule. The State Government will have to consider in each case whether the volume of trade in the produce is of such a nature as to give rise to wholesale trade. If it comes to this conclusion it may add that produce to the Schedule. On the other hand if it comes to the conclusion that the production of a particular produce included in the Schedule has fallen and can be no longer a subject-matter of wholesale trade, it may take out that produce from the Schedule. We may in this connection refer to Edward Mills Co. Ltd., Beawar v. State of Ajmer, 1955-I SCR 735: ((S) AIR 1955 SC 25). In that case S. 27 of the Minimum Wages Act, 1948, which gave power to the appropriate part of the schedule to add to either respect of which it is of opinion that minimum wages shall be fixed by giving notification in a particular manner was held to be constitutional. It was observed in that case that the legislative policy was apparent on the face of the enactment (impugned there); it was to carry out effectively the purposes of the enactment that power had been given to the

appropriate reference was fixed industry list. opinion power add items specified with different of apparent Therefore, Legislative essential administrative accessory deemed and reject gives Government unconstitutional." Government to local that minimum wages should be in regard to a particular trade or which was not included in the The same considerations in our apply to S. 29 of the Act and the is given to the State Government to, or amend, or cancel any of the of the agricultural produce in the Schedule in accordance with the local conditions prevailing in the parts of the State in pursuance of the legislative policy which is on the face of the Act. in the enacting S.29, the had not stripped itself of its powers or assigned to the or authority anything but an administrative subordinate power which was necessary to carry out the purpose of the policy of the Act. We therefore reject the contention that S.29 of the Act gives uncontrolled power to the State Government and is therefore unconstitutional."

16. The provisions of the Act of 1963 are similar to the provisions of the Act of 1939. The constitutional validity to the Act of 1939 having been upheld, we are of the view that the provisions of the Act of 1963 for the same reasons must be upheld. As a matter of fact, the learned counsel for the petitioner was candid enough in accepting the position that in the light of the judgment of the Supreme Court in the case of Mohammad Hussain Gulam Mohammad (supra) upholding the constitutionality of the Bombay Agricultural Produce Market Act, 1939, not much can be said about constitutionality of the Act of 1963. The learned counsel for the petitioner also could not

demonstrate any illegality in the notifications dated 20th June, 1988 and 18th October, 1988. As already indicated above, by the notification dated 20th June, 1988 issued under section 4(1) of the Act of 1963, it was declared that the marketing of agricultural produce mentioned therein shall be regulated in the market area of the Bombay Agricultural Produce Market Committee with effect from 1.7.1988. By the subsequent notification dated 18th October, 1988, certain localities viz. Dana Bunder/Masjid Bunder were declared to be principal markets.

17. The thrust of the argument of the learned counsel for the petitioner was that the dry fruits and dry dates in which the petitioner deals are imported and, therefore, are not 'agricultural produce' within the meaning of clause (a) of section 2(1) of the Act of 1963. The argument does not impress us. Clause (a) of section 2(1) defines agricultural produce for the purposes of the Act of 1963 and it means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, pisciculture and forest specified in the schedule. By no stretch of imagination, can it be said that dry fruits and dry dates are not agricultural produce as defined in clause (a) of section 2(1). The Act of 1963 and

the notifications issued thereunder do not draw any distinction between the agricultural produce produced and processed within the State and outside. For the applicability of the Act and the notifications issued thereunder, what is relevant is that the sale of of an agricultural produce has taken place in the market area or in the market yard. Our view find support from the Division Bench judgment of this court in the matter of special civil application Nos.1477 of 1972 and 124 of 1975, Popatlal Kisandas Kaga and ors. v. State of Maharashtra and anr. decided on 10th August, 1978 wherein this court held thus-

"It was also contended that the Act affected transactions between traders outside the market area.

The Supreme Court pointed out that it is only when the sale takes place within the market area that the produce has to pass through the principal market yard or sub-market yard, but if a trader gets something from outside the market area and the sale takes place outside the market area and the thing is brought into the market area by the trader after the purchase, such transaction will not be subject to any fees, for fees have only to be charged on agricultural produce brought and sold in the market area under Rule 53 read with section 11.

But observed that the Supreme Court in paragraph 19, that where the sale takes place outside the market area and the commodity is merely brought into the market area by the wholesale trader, there will be no question of any fee being charged on that high transaction, but the Supreme Court cautioned by observing "of course, if

there is a further sale in the market area
or in the market yards by the wholesale
trader to some one locally that may be
liable to fee. We do not see how in the
circumstance it can be said that this is a
case of unreasonable restriction on the
right to carry on trade and business."

18. We, thus, find no merit in the submission of
the learned counsel for the petitioner that the dry
fruits and dry dates dealt with by the petitioner
are imported and are not agricultural produce.

19. Writ petition is dismissed with no order as to
costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)